

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Gov. Jesse Ventura,

Civil No. 12-472 RHK/AJB

Plaintiff,

vs.

Chris Kyle,

**DECLARATION OF JOHN P.
BORGER IN OPPOSITION TO
PLAINTIFF'S MOTION TO AMEND
SCHEDULING ORDER**

Defendant.

I, John P. Borger, hereby declare as follows:

1. I am an attorney at Faegre Baker Daniels LLP, which represents Defendant Chris Kyle in the above-captioned case. I make this Declaration upon personal knowledge and upon review of the firm's files and records in this case, including the exhibits identified below.

2. Attached hereto as Exhibit A is a true and correct copy of a letter dated October 10, 2012, from Plaintiff's counsel Court Anderson to Defendant's counsel John Borger.

3. Attached hereto as Exhibit B is a true and correct copy of a letter dated October 12, 2012, from John Borger to Court Anderson.

4. Attached hereto as Exhibit C is a true and correct copy of an email chain commencing with an email from Court Anderson to John Borger and Leita Walker sent on November 26, 2012 at 9:02 a.m. This was the first communication from Plaintiff's

counsel regarding Defendant's expert witness Prof. David A. Schultz since I sent my letter of October 12, 2012 (Exhibit B.)

5. Attached hereto as Exhibit D is a true and correct copy of an email from Vicki D. Vien (forwarding a letter from Court Anderson to John Borger and Leita Walker) sent on November 27, 2012 at 4:23 p.m. The accompanying letter contained the first assertion that Plaintiff had "been waiting for your response to our expert interrogatory, which still has not been provided."

6. Attached hereto as Exhibit E is a true and correct copy of an email from John Borger to Court Anderson sent on November 29, 2012 at 9:13 a.m., from the Dallas airport. I was occupied throughout the day on November 28 with the deposition of Chris Kyle in Dallas.

7. Attached hereto as Exhibit F is a true and correct copy of the Expert Report of David A. Schultz dated October 1, 2012.

8. Attached hereto as Exhibit G is a true and correct copy of Chris Kyle's Supplemental Answer to Plaintiff's Interrogatory No. 5 dated November 30, 2012.

9. Attached hereto as Exhibit H is a true and correct copy of Jesse Ventura deposition Exhibit DX-58.

10. Attached hereto as Exhibit I is a true and correct copy of Jesse Ventura deposition Exhibit DX-59.

11. Attached hereto as Exhibit J is a true and correct copy of Plaintiff's Notice of Subpoena to Scott McEwen dated November 1, 2012.

12. Attached hereto as Exhibit K is a true and correct copy of Plaintiff's Amended Notice of Subpoena to Scott McEwen dated November 15, 2012, sent to Faegre Baker Daniels LLP by regular mail.

13. Based on statements by Plaintiff's counsel, including statements at the October 31 discovery motion hearing (Dkt. #83 at 8-10), it appears that Plaintiff had prepared and attempted to serve a subpoena on McEwen prior to November 1. We have not been able to locate any record of receipt of a Notice of such an earlier subpoena, nor do I recall receiving any such earlier Notice.

14. Attached hereto as Exhibit L is a true and correct copy of a letter dated December 4, 2012 to Plaintiff's counsel Court Anderson and Defendant's counsel John Borger from Zvi "Hersy" Silver, attorney for Scott McEwen.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: December 11, 2012

/s/ John P. Borger

John P. Borger